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PTO/SB/21 (08-03)

Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	09/869,002
		Filing Date	June 22, 2001
		First Named Inventor	Robert BARHAM
		Art Unit	C. Collins
		Examiner Name	1638
Total Number of Pages in This Submission	25	Attorney Docket Number	500852000101

### ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form (in duplicate, 2 pages)	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply (12 pages)	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input checked="" type="checkbox"/> Affidavits/declarations (9 pages total)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input checked="" type="checkbox"/> Terminal Disclaimer (1 page)	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)		
<input type="checkbox"/> Response to Missing Parts/Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	MORRISON & FOERSTER LLP (Customer No. 20872) Otis Littlefield - 48,751
Signature	
Date	December 2, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EL968416479US, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: December 2, 2003

Signature:   
(Valerie Cohen)

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**FEE TRANSMITTAL**  
**for FY 2004**

Effective 10/01/2003, Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$ 55.00)**METHOD OF PAYMENT (check all that apply)**
 Check  Credit Card  Money Order  Other  None
 Deposit Account:

Deposit Account Number 03-1952

Deposit Account Name Morrison &amp; Foerster LLP

The Director is authorized to: (check all that apply)

 Charge fee(s) indicated below  Credit any overpayments Charge any additional fee(s) or any underpayment of fee(s) Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$ 0.00)

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

	Extra Claims	Fee from below	Fee Paid
Total Claims	8	-28 = 0 x 9 =	0.00
Independent Claims	4	-4 = 0 x 43 =	0.00
Multiple Dependent		145 =	0.00

**Large Entity**

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0.00)

\*\*or number previously paid, if greater; For Reissues, see above

Complete if Known	
Application Number	09/869,002
Filing Date	June 22, 2001
First Named Inventor	Robert BARHAM
Examiner Name	C. Collins
Art Unit	1638
Attorney Docket No.	500852000101

**FEE CALCULATION (continued)****3. ADDITIONAL FEES**

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify)	1814 Statutory Disclaimer		55.00

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 55.00)

**SUBMITTED BY**

(Complete if applicable)

Name (Print/Type)	Otis Littlefield	Registration No. (Attorney/Agent)	48,751	Telephone	(415) 268-6846
Signature	<i>Otis Littlefield</i>		Date	December 2, 2003	

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Dated: December 2, 2003

Signature: *Valerie Cohen* Valerie Cohen

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# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003, Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT** (\$ 55.00)

**METHOD OF PAYMENT (check all that apply)**

Check  Credit Card  Money Order  Other  None  
 Deposit Account:

Deposit Account Number 03-1952

Deposit Account Name Morrison & Foerster LLP

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below  Credit any overpayments  
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## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity	Small Entity
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Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
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1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
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1005	160	2005	80	Provisional filing fee	

**SUBTOTAL (1) (\$ 0.00)**

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1205	18	2205 9 ** Reissue claims in excess of 20 and over original patent

**SUBTOTAL (2) (\$ 0.00)**

\*\* or number previously paid, if greater; For Reissues, see above

### SUBMITTED BY

(Complete if applicable)

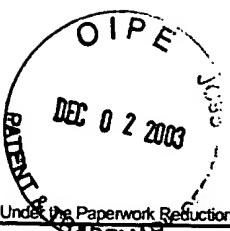
Name (Print/Type)	Otis Littlefield	Registration No. (Attorney/Agent)	48,751	Telephone	(415) 268-6846
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Signature	<i>Otis Littlefield</i>	Date	December 2, 2003
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Dated: December 2, 2003

Signature: *Valerie Cohen* (Valerie Cohen)



PTO/SB/26 (08-03)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.TERMINAL DISCLAIMER TO OBLVIAE A DOUBLE PATENTING  
REJECTION OVER A PRIOR PATENTDocket Number (Optional)  
500852000101

In re Application of: Robert BARHAM et al.

Application No.: 09/869,002

Filed: June 22, 2001

For: HEAT TOLERANT BROCCOLI

The owner, R&D Ag, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,294,715. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

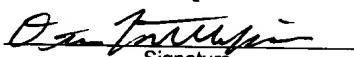
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1.  For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2.  The undersigned is an attorney or agent of record.

  
Signature

December 2, 2003

Date

Otis Littlefield - 48,751  
Typed or printed name(415) 268-6846  
Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) is included. Fee Transmittal form (PTO/SB/17) is attached to this submission in duplicate.

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.